IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 13966 of 2006
Date of decision 13.11.2006

Raj Kumar and others .. petitioners

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. RS Malik, Advocate for the petitioners

M.M.Kumar, J.

The petitioners have prayed for issuance of a writ in the nature of mandamus directing the respondent to grant the petitioners benefit of one advance increment on their promotion to the post of Head master as envisaged in Rule 4.4 of the Punjab Civil Service Volume 1, Part 1 (as applicable to Haryana). It is undisputed that the petitioners were working as Headmasters and were granted higher standard pay scale on 1.1.1994 as per length of their service in accordance with the policy of the State Government dated 8.2.1994 and 9.5.1995 and were conferred the higher standard pay scale of Rs.2000-3200 and they continued to get the same till their promotion to the post of Headmasters in the Middle schools which post is carrying the pay scale of Rs.1640-2900. They were promoted by respondent no. 2 as Headmasters on 17.6.1996 and they joined as such. It is alleged that pay of the petitioners who joined prior to 1.1.1998 was fixed at the stage next above in higher standard pay scale which they were getting at the time of their promotion as Headmaster as the promotion post involves assumption of duties and responsibilities of greater importance then those attached to the post of master. The petitioner was granted one

advance increment in his pay scale on promotion to the post of Headmaster according to the instructions and rules framed by the Government i.e. Rule 4.4 of the rules. On 7.1.1998, the respondent state revised pay scale of all the employees w.e.f. 1.1.1996 and in pursuance thereof the petitioners were granted the pay scale of Rs.6500-10500 w.e.f. 1.1.1996 but while refixing the pay of the petitioner in revised pay scale they were not granted the benefit of one advance increment on the date of their promotion to the post of Headmaster which is totally illegal.

After hearing learned counsel, we are of the considered view that no relief could be granted to the petitioners as they have already enjoyed better pay scale of Rs.2000-3200. It would be appropriate to make a reference to rule 4.4(a) of the Rules which reads as under:

> " 4.4 The initial substantive pay of a Government employee who is appointed substantively to a post on a time scale of pay is regulated as follows-
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> (a) If he holds a lien on a permanent post, other than a tenure post, or would hold lien on such a post, had his, lien not been suspended -
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> (i) when appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of rule 4.13) than these attaching to such permanent post, he will draw as initial pay the stage of the time scale next above his substantive pay in respect of the old post;
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> (ii) When appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time

scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage, the stage next below that pay plus personal pay equal to the difference, and in either case will continue to draw that pay until such time as he would have received an increment in the time scale of the old post or for the period after which an increment is earned in the time scale of the new post, whichever is less. But if the minimum of the time scale of the new post is higher than his substantive pay in respect of the old post he will draw that minimum as initial pay.

(iii) When appointment to the new post is made on his own request under Rule 3.17(a) and maximum pay in the time scale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay."

The matter is not res-integra. In catena of judgements, their Lordships of Hon'ble the Supreme Court has taken the view that in such circumstances no benefit of Rule 4.4(a) of the rules would be available. In the case of State of Haryana and another v. Partap Singh and others JT2006 (12) SC 406 this very question was considered when certain JBT teachers on acquiring the higher qualification of B.A./B.Ed. had initially approached this Court which allowed the benefit of Rule 4.4 of the Rules. However, reversing the view taken by this Court and after referring to Rule 4.4(a), their Lordships of Hon'ble the Supreme Court observed as under:

" The above rule says that when appointment to the new post involves the assumption of duties or responsibilities of greater importance than those attaching to such permanent post, the

incumbent will draw as initial pay the stage of time scale next above his substantive pay in respect of the old post meaning thereby that the promotion which involves responsibilities of greater importance then in that case the incumbent will draw as initial pay the stage of time scale next above his substantive pay in respect of the old post. That means he will be entitled to one increment in the old post. But in the present case, the respondents are already drawing the pay scale of the post of Master i.e. higher post. As such , where is the question of granting them one increment further now ?. Under Rule 4.4 it could have been possible to grant them fixation if they were continuing in the old scale of JBT teachers and on their promotion to the post of Master, then certainly they would have been entitled to fixation of pay giving them the initial pay at the stage of time scale next above their substantive pay in respect of the old post. But they are already fixed in the pay scale of higher post of Master which though legitimately they were not entitled to because of the change in the policy but they continue in the higher pay scale despite the change in the policy and the Government did not take any further steps to put the house in proper order. Be that as it may, since the respondents were drawing the higher pay scale on acquiring of higher educational qualifications, i.e the Master's pay scale, and now only regular orders have been passed, promoting them as Master, there is no question of again fixing them next above their substantive pay in respect of the old post. They are not holding the old post any

more and they were not drawing the salary of JBT teachers i.e. the old post. Therefore, there is no question of granting them the initial pay the stage of time scale next above their substantive pay in respect of the old post."

Similar view has been taken by Hon'ble the Supreme Court in State of Punjab v. Lal Singh (1996) 11 SCC 657; Union of India and others v. Ashok Kumar Banerjee (1998) 5 SCC 242 and State of Haryana and others v. Sumitra Devi and others (2004) 12 SCC 322.

In view of the above, we find no merit in this petition and accordingly the same is dismissed.

(M.M.Kumar)
Judge

(M.M.S.Bedi)
Judge

13.11.2006
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